PRIVATE SECURITIES LITIGATION/Stay of Discovery

SUBJECT: **Private Securities Litigation Reform Act of 1995 . . . S. 240. D'Amato motion to table the Specter amendment No. 1484.**

ACTION: MOTION TO TABLE AGREED TO, 52-47

SYNOPSIS: As reported with an amendment in the nature of a substitute, S. 240, the Private Securities Litigation Reform Act, will enact changes to current private securities litigation practices in order to discourage unjust suits and to provide better information and protection from fraud for investors.

The Specter amendment would strike the provision in the substitute amendment that will provide for a stay on all discovery upon the filing of a motion to dismiss a suit unless the court upon a motion finds that particularized discovery is necessary to preserve evidence or to prevent undue prejudice, and would instead provide that discovery would only be stayed if a court determined that such stay: would avoid waste, delay, duplication, or unnecessary expense; and would not prejudice any plaintiff. Additionally, the amendment would limit discovery to materials directly relevant to the facts expressly pleaded in a complaint in the period prior to the filing of a responsive pleading.

Debate was limited by unanimous consent. Following debate, Senator D'Amato moved to table the Specter amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

The only beneficiaries of the Specter amendment would be the buccaneer barristers who specialize in ripping off securities firms. Our colleagues who believe that the practical effect of this amendment would be to help small investors who have been defrauded could not be more wrong; their belief indicates a fundamental misunderstanding of the abusive nature of securities litigation as it exists today. Right now, a single law firm handles 30 percent of all securities litigation that is filed. This firm keeps on hand lists of investors whom it pays to represent. These investors are little more than professional losers who act as front men for this law firm.

(See other side)

YEAS (52)

Republicans (39 or 74%)		Democrats (13 or 28%)
Abraham	Hatch	Breaux
Ashcroft	Hatfield	Daschle
Bennett	Helms	Dodd
Brown	Hutchison	Feinstein
Burns	Inhofe	Ford
Chafee	Kempthorne	Harkin
Coats	Kyl	Johnston
Coverdell	Lott	Lieberman
Craig	Lugar	Mikulski
D'Amato	Mack	Moseley-Braun
Dole	McConnell	Murray
Domenici	Murkowski	Pryor
Faircloth	Nickles	Reid
Frist	Pressler	
Gorton	Simpson	
Gramm	Smith	
Grams	Stevens	
Grassley	Thomas	
Gregg	Thurmond	
	Warner	

NAYS (47)

Republicans (14 or 26%)	Democrats (33 or 72%)	
Campbell	Akaka	Hollings
Cochran	Baucus	Inouye
Cohen	Biden	Kennedy
DeWine	Bingaman	Kerrey
Jeffords	Boxer	Kerry
Kassebaum	Bradley	Kohl
McCain	Bryan	Lautenberg
Packwood	Bumpers	Leahy
Roth	Byrd	Levin
Santorum	Conrad	Moynihan
Shelby	Dorgan	Nunn
Snowe	Exon	Pell
Specter	Feingold	Robb
Thompson	Glenn	Rockefeller
	Graham	Sarbanes
	Heflin	Simon
		Wellstone

NOT VOTING (0)

Republicans (0)	Democrats (0)

VOTING PRESENT(1)
Bond

EXPLANATION OF ABSENCE:
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

Any time the stock of a company falls substantially, this firm gleefully races to the courthouse to allege fraud on behalf of its client(s). It is definitely a race--this law firm is not the only abuser of class action security lawsuits. Once lawsuits are filed, firms immediately start extensive discovery procedures. For companies, around 80 percent of their costs of defending against these unjust suits are due to discovery costs. The law firms then begin negotiations to settle. Their suits may allege hundreds of millions of dollars in damages, but they may settle for a few million. The lawyers take most of the money, and give the rest to the "class" they were supposedly representing, most of whom had no idea they were being represented. Fully 93 percent of these suits are settled, not because the companies are guilty of anything, but because of the costs of defending against them and the risk that if the suit is successful the company may be bankrupted. Thus, allowing discovery as proposed by the Specter amendment does not benefit the little guy, it only protects those unethical, thieving lawyers who specialize in blackmailing securities firms. We therefore strongly urge the rejection of this amendment.

Those opposing the motion to table contended;

The general rule of Federal procedure is that discovery may proceed during the pendency of a motion to dismiss unless a judge, on application by a defendant, stays that discovery. This bill will change this general rule for securities litigation only. We oppose this change. We urge our colleagues to examine how this change will work in practice. Assume shareholders of a corporation have some evidence that the corporation defrauded them, so they file a class action lawsuit. The corporation could then file a motion to dismiss, and thus bar them from discovery. They will therefore be hindered in building their case. We think this change is unfair, so we have offered the Specter amendment, which would make it much more difficult to block the legitimate discovery activities of plaintiffs. The amendment is meritorious, and should not be tabled.